



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Dispute Codes**

CNC

### **Introduction**

This hearing was convened as a result of the application of the tenant for dispute resolution under the *Residential Tenancy Act* (the “*Act*”). The tenant applied to cancel a 1 Month Notice to End Tenancy for Cause (the “1 Month Notice”).

The tenant, the landlord, and two daughters of the landlord attended the teleconference hearing. The hearing process was explained to the parties and an opportunity was given to ask questions about the hearing process. Thereafter the parties gave affirmed testimony, were provided the opportunity to present their evidence orally and in documentary form prior to the hearing, and make submissions to me.

Both parties confirmed that they received documentary evidence from the other party prior to the hearing and that they had the opportunity to review that evidence prior to the hearing. Based on the above, I find the parties were sufficiently served in accordance with the *Act*. I have reviewed all evidence before me that met the requirements of the rules of procedure and that was presented during the hearing; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### **Issue to be Decided**

- Should the 1 Month Notice be cancelled?

### **Background and Evidence**

A copy of the original tenancy agreement was submitted in evidence. A fixed term tenancy agreement began on June 1, 2007 and reverted to a periodic, month to month tenancy agreement after May 31, 2008. The parties agreed that currently, monthly rent of \$2,730.00 is due on the first day of each month.

The parties agreed that the tenant received a 1 Month Notice on July 7, 2014 via registered mail, and that the 1 Month Notice was dated June 30, 2014. The 1 Month Notice alleges one cause; namely, the tenant has assigned or sublet the rental unit/site without the landlord's written consent. The tenant disputed the 1 Month Notice on July 10, 2014. The effective vacancy date listed on the 1 Month Notice is August 10, 2014. The tenant testified that he continues to occupy the rental unit. Section 9 of the original written tenancy agreement reads in part:

**“ASSIGN OR SUBLET**

1) The tenant may assign or sublet the rental unit to another person with the written consent of the landlord...”

[reproduced as written]

During the hearing, the tenant testified that he has no evidence to support that the landlord has ever provided the tenant with written permission to sublet the rental unit. The parties referred to a periodic, month to month tenancy agreement dated February 7, 2011, which indicates the landlords as both the tenant K.H. as an “agent” for the landlord and the landlord, C.Y, and indicates the tenant is third party L.B. The tenant, K.H. confirmed that he did not have the written or verbal permission to enter into a tenancy agreement with third party, L.B. The landlord testified that he has never given the tenant written permission to sublet the rental unit and testified that he did not give the tenant permission for the tenant to sign a tenancy agreement with third party, L.B.

The tenant claims that he was verbally given permission at the start of the tenancy that he could have roommates and takes the position that the tenancy agreement is not a sublet agreement. The tenant referred to the landlord's documentary evidence which reads, in part:

“...Our initial agreement with him was that 2 couples would be living at the residence, one upstairs and one downstairs...”

[reproduced as written]

The landlord responded by confirming that at no time did he provide written permission for the tenant to sublet the rental unit to a third party.

Analysis

Based on the documentary evidence and testimony of the parties, and on the balance of probabilities, I find the following.

There is no dispute that the tenant received the 1 Month Notice dated June 30, 2014 on July 7, 2014 by registered mail. The tenant disputed the 1 Month Notice on July 10, 2014. Based on the above, I find the tenant disputed the 1 Month Notice within the required 10 day timeline permitted to dispute a 1 Month Notice under section 47 of the *Act*.

Once a 1 Month Notice has been disputed within the required timeline under the *Act*, the onus of proof reverts to the landlord to prove that the 1 Month Notice is valid. Although the tenant alleges that the tenancy agreement signed between the tenant and third party, L.B. does not constitute a sublet, I disagree. Furthermore, I find that based on the tenant's testimony, he named the landlord in that tenancy agreement without the permission of the landlord. There was also no evidence presented that the tenant was ever approved in writing by the landlord to act as "agent" for the landlord. Therefore, I find the tenant entered into a tenancy agreement with third party L.B. without the landlord's written permission on February 7, 2011. Accordingly, I find the tenant breached section 9 of the tenancy agreement by failing to obtain the written permission of the landlord. Given the above, **I uphold** the 1 Month Notice issued by the landlord and dated June 30, 2014. Therefore, **I dismiss** the tenant's application, due to insufficient evidence, without leave to reapply.

I will now address the effective vacancy date of the 1 Month Notice. Pursuant to section 53 of the *Act*, as the tenant was served with the 1 Month Notice on July 7, 2014, the original effective vacancy date of August 10, 2014 automatically corrects to August 31, 2014. Section 55 of the *Act* applies and states:

**Order of possession for the landlord**

**55** (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant an order of possession of the rental unit to the landlord if, at the time scheduled for the hearing,

**(a) the landlord makes an oral request for an order of possession, and**

**(b) the director dismisses the tenant's application or upholds the landlord's notice.**

**[my emphasis added]**

The effective vacancy date of August 31, 2014 has already passed and I have upheld the 1 Month Notice and dismissed the tenant's application. Given that the parties agree that September 2014 rent has already been paid by the tenant and the landlord verbally requested an order of possession effective September 30, 2014 at 1:00 p.m., **I grant** the landlord an order of possession **effective September 30, 2014 at 1:00 p.m.** This order must be served on the tenant and may be enforced in the Supreme Court of British Columbia.

### Conclusion

The tenant's application has been dismissed.

The landlord has been granted an order of possession effective September 30, 2014 at 1:00 p.m. This order must be served on the tenant and may be enforced in the Supreme Court of British Columbia.

This decision is final and binding on the parties, unless otherwise provided under the Act, and is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: September 12, 2014

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Residential Tenancy Branch

